

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11121 of 2018 - DB

(Arising out of OIO-MUN-CUSTM-000-COM-12-17-18 dated 24/01/2018 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

Apollo Tyres Limited

.....Appellant

Joseph & Kuriyan , Advocates,
42/2260, Providence Road, Kochi,
Ernakulam, Kerala

VERSUS

Commissioner of C.-Mundra

.....Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:

Shri Joseph Kodianthara Sr. Advocate & Ms. Shweta Garge Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10904/2024

DATE OF HEARING: 19.12.2023
DATE OF DECISION: 19.04.2024

RAMESH NAIR

This appeal is directed against order-in-original MUN-CUSTM-000-COM-12-17-18 dated 24.01.2018 wherein the appellant challenged only imposition of penalties of Rs. 68,74,072/- imposed under Section 114A of the Customs Act, 1964. The brief background of the case is that the appellant's factories are situated at Kerala, Gujarat and Tamil Nadu which engaged in the manufacture of Automotive Tyers. The present issue is with respect to the import of Shell Flavex Oil 595 B/H imported through Chennai and Nhava Sheva ports for use in its factory at Gujarat. The item being Plasticizer and was classified by all Custom Houses under CTH 38122090. However, with respect to such imports the DRI, Gandhidham after elaborate examination of chemical properties of the item came to the

conclusion that it should be classified under CTH 27079900. The appellant without contesting the duty liability due to changed in the classification admittedly paid the duty of Rs. 68,74,072/- on 02.11.2015 and a small amount was paid on 04.01.2018, despite this payment was made, the DRI has issued the show cause notice dated 24.06.2016. The said show cause notice has been adjudicated wherein the duty along with interest was confirmed and the same was appropriated as the appellant have already paid the amount. In addition a penalty of Rs. 68,74,072/- was imposed under Section 114A of Customs Act, 1964. Being aggrieved by Order-In-Original appellant filed the present appeal only seeking the waiver of penalty.

2. Shri Joseph Kodianthara Learned Sr. Advocate with Ms. Shweta Garge Advocate appearing on behalf of the appellant submits that the issue involved is the classification of imported goods, the nature of the goods could be known only after detail testing and analysis of the goods. Therefore, chemical parameter of the product was not known to the appellant. Accordingly, in the matter of classification mala fide intention cannot be attributed to the appellant. Moreover, in all over India all the Commissionerates were classifying the said goods under CTH 38122090 as declared by the appellant therefore the correct classification could be arrived only after detailed analysis of the product. In this position, the appellant is not liable for penalty under Section 114A.

2.1 He further submits that the appellant without contesting the merit admittedly paid the duty before issuance of show cause notice and a small amount was paid subsequently, for this reason also penalty is not imposable. He placed reliance on the following judgment:-

- Commissioner of C.Ex, Chennai-II Vs. Hindustan Motors Ltd- 2012 (284) ELT 168 (Mad.)
- Commissioner of C. Ex. Mumbai-II Vs. Hindustan Petroleum Corporation Ltd. -2017 (347) ELT 229 (Bom.)
- Commissioner of C. Ex. Delhi-III, Gurgaon Vs. Machino Montell (I) Ltd- 2004 (168) ELT 466 (Tri.-LB)

3. Shri A.K Samota Learned superintended (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of the record we find that the case relates to classification of the imported goods, the appellant have classified the goods under CTH 38122090 on a bona fide belief that the imported goods were Plasticizer and the same were used as Plasticizer in the manufacture of the tyre. The compound Plasticizer is clearly mentioned in the tariff entry against CTH 38122090. Therefore, the bona fide belief of the appellant that the product being a plasticizer classifiable under CTH 38122090 cannot be doubted with. We further find that the appellant without contesting the duty liability paid the entire amount along with interest and seek relief only for waiver of penalty.

4.1 We also observed that in all over India at all the Ports said goods was being classified and accepted under CTH 38122090 considering the same as plasticizer. Therefore, it is not only belief of the appellant but also the view of the department that the goods is classifiable under CTH 38122090. However, it could only be ascertained that the good is classified under CTH 27079900 after detailed analysis of the product. Therefore, in these facts and circumstances of the case the penalty under Section 114A cannot be imposed. For the ease of reference, the said Section is reproduced below:-

"114A. Penalty for short-levy or non-levy of duty in certain cases.—
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 9[sub-section (8) of section 28] shall, also be liable to pay a penalty equal to the duty or interest so determined.

From the plain reading of the above section 114A, it can be seen that the equal penalty can be imposed only in a case where the duty has not been paid or short paid by reason of collusion or any willful mis-statement or suppression of fact. In the present case as per the facts discussed above, in our mind it is absolutely clear that non payment of duty on the part of the appellant is not by reason of suppression of fact, collusion or any willful misstatement. Therefore, the ingredients for imposing penalty under section 114A are absent. Therefore, the penalty under section 114A cannot be imposed.

5. As per our above discussion the duty demand along with interest and payment thereof are upheld and maintained. The penalty imposed under section 114A is set aside. Accordingly, the appeal is allowed in above terms.

(Pronounced in the open court on 19.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)